



Exempt Action Final Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapters -40 and -110
Regulation title	Eligibility Conditions and Requirements, and Eligibility and Appeals
Action title	Mandatory changes under the federal Deficit Reduction Act of 2005
Document preparation date	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) (townhall.state.va.us/dpbpages/dpb_apa.htm), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act (leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100), the *Virginia Register Form, Style, and Procedure Manual* (legis.state.va.us/codecomm/register/download/styl8_95.rtf), and Executive Orders 21 (02) and 58 (99) (governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)

Summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

On February 8 2006, the President signed into law the Deficit Reduction Act of 2005 (“the Act” or “the DRA”) which mandated significant changes in Medicaid eligibility rules for receipt of Medicaid payment for long-term care services. States must comply with this new federal law in order to continue receiving federal financial participation for their Medicaid programs. The Act prohibits Medicaid payment of long-term care services when individuals transfer assets for less than fair market value within five years of their application for Medicaid. The disqualification period for payment of long-term care services will begin with the date the individual is both institutionalized and eligible for Medicaid. The Act makes individuals with more than \$500,000 in home equity ineligible for Medicaid long-term care benefits, unless the home is occupied by a spouse, or a disabled or dependent child. The Act also counts as assets some previously exempt financial instruments such as annuities, promissory notes and mortgages, and considers a life

estate purchased in another individual’s home a countable asset unless the purchaser lives in the home for a period of twelve months. Further, the Act requires States to have a provision that allows individuals to claim an Undue Hardship when they have been denied eligibility for Medicaid payment of long-term care services due to an uncompensated transfer. The intent of the federal legislation that requires these regulatory changes is to ensure that individuals not gain Medicaid eligibility by inappropriately shielding substantial wealth.

Please Note: 12 VAC 30-40-10 (General conditions of eligibility) is currently the subject of an emergency regulation adding a new subsection [12 VAC 30-40-10(11)] that addresses changes made pursuant to Medicare Part D. Because this action is final, the space for the new subsection 12 VAC 30-40-10(11) under the emergency regulation is being reserved.

Please also Note: Sections 12 VAC 30-40-290 and 30-40-300 are also the subject of a separate regulatory package that will address issues that were left as options for states under the Deficit Reduction Act. All of these various regulatory packages will be harmonized at the Final Regulation stage.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages, Eligibility Conditions and Requirements (12 VAC 30-40-10, 30-40-290, 30-40-300 and 30-40-360), and state-only regulations Eligibility and Appeals (12 VAC 30-110-710 and 30-110-960) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The existing sections of the State Plan for Medical Assistance that are affected by this action are: Eligibility Conditions and Requirements (12VAC 30-40-10, 30-40-290, 30-40-300 and 30-40-360), and state-only regulations Eligibility and Appeals (12 VAC 30-110-710 and 30-110-960). Details of these mandatory changes are set forth below:

12 VAC 30-40-10

As mandated by the DRA, several new requirements are being added to this section concerning Medicaid applicants and recipients. These new requirements are: (i) Medicaid applicants, as a new condition of eligibility for Medicaid payment of long-term care services, must now provide a description of any interest they or their spouse has in any annuity or similar financial instrument; (ii) The applicant or their spouse must make the State a remainder beneficiary for all annuities purchased on or after February 8, 2006; (iii) individuals with substantial home equity are now prohibited from receiving Medicaid payment of nursing facility or other long-term care services.

In addition, Section 6036 of the DRA also imposed a new requirement that applicants and recipients provide acceptable documentary evidence of both identity and of U.S. citizenship in order to obtain or maintain eligibility. The language of this amendment was provided to the states by the Centers for Medicare and Medicaid Services, and is reflected in this regulatory section.

12 VAC 30-40-290

Lifetime rights to real property are not currently counted as a financial resource when determining Medicaid eligibility. Under the DRA, the purchase of a life right in another individual's home will now be subject to the transfer of asset rules.

12 VAC 30-40-300

Current regulations require the Medicaid agency to determine if an applicant for long-term care has transferred financial resources within 36 months of applying for Medicaid. If it is determined that the applicant transferred assets for less than their fair market value, Medicaid imposes a waiting period or period of ineligibility for Medicaid payment of long-term care services. Under current regulations, this period of ineligibility to receive Medicaid long-term care benefits begins from the time the applicant transferred the assets. For Medicaid recipients who make such transfers, the period of ineligibility begins the first of the month following the transfer.

The Deficit Reduction Act changed the transfer of assets rules for transfers made on or after February 8, 2006. It lengthened the timeframe that the Medicaid agency must consider to determine if an applicant for long-term care transferred resources from 36 months to 60 months. Under the new rules, if the applicant transferred assets for less than fair market value, the period of ineligibility for Medicaid payment of long-term care services will now begin either the first day of the month the individual made the transfer or the date on which the individual would have been eligible for Medicaid long-term care benefits had they not made the transfer, whichever is later.

Current regulations disregard fractional portions of a month when calculating the period of ineligibility for Medicaid payment of long-term care services. Pursuant to the mandate of the

DRA, new regulatory provisions in this section require that Medicaid payment be withheld for whole as well as fractional portions of a month. In addition, current regulations do not define “assets” to include life estates, annuities, promissory notes or mortgages. A change in this section now expands the definition of “assets” to include these items, and provides that all annuities must name the state as a remainder beneficiary; these changes also describe when an annuity will be considered a transfer of assets for less than fair market value.

12 VAC 30-110-710

Current regulations allow an individual to claim undue hardship when they have transferred resources for less than fair market value and have been denied Medicaid payment for long-term care services. The Deficit Reduction Act requires states to provide for a hardship waiver process when the application of the transfer of asset rules would deprive an individual of medical care such that their health or life would be endangered. The statute also provides that undue hardship exists when application of the transfer of assets rules would deprive the individual of food, clothing, shelter or other necessities of life. The statute specifies who can request a hardship waiver and requires a process for appealing a denial of a claim of undue hardship. Pursuant to these federal changes, the Agency is changing the rules regarding undue hardship in 30-110-710 to conform the new federal requirements.

12 VAC 30-110-960

When a married Medicaid recipient enters long term care, Medicaid rules allow them to contribute, when necessary, a portion of their monthly income to his or her spouse who remains in the community. This is called the minimum monthly maintenance allowance. The Agency determines the amount of this allowance based upon the community spouse’s financial circumstances. The DRA now requires that, when determining this minimum monthly maintenance needs allowance, the income of the institutionalized spouse be first made available to the spouse who remains in the home or community before any of the institutionalized spouse’s resources are transferred to the spouse in the community. This action adjusts the current regulations to impose this income first rule.

12 VAC30-40-360

The Deficit Reduction Act of 2005 requires that certain entrance fees in a continuing care retirement community or life-care community be considered a resource to a Medicaid applicant. This action adds a new subsection to include this new requirement.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This final exempt regulatory action will not have any direct impact on the institution of the family and the stability of the family. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; it will not encourage or

discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, or one's children and/or elderly parents; nor will it strengthen or erode the marital commitment.